IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SHOW CAUSE NOTICE NO.1336 OF 2006

AND

CONTEMPT PETITION NO.57 OF 2006

IN

NOTICE OF MOTION NO.2621 OF 2000

IN

SUIT NO.3632 OF 2000

Kochuput Henparambil Scaria ...Petitioner

vs.

1.Rajendra Dewan & another. ...Contemnors/ Respondents.

Mr.D.A.Barot, for Petitioner.

Mr.S.S.Redij, for Respondent no.1.

Mr.K.S.Patil, for Respondent no.2.

CORAM: D.K.DESHMUKH,J.

DATED: 18th April,2007

P.C.:-

1. By this petition, the petitioner alleges that the respondents have willfully violated the order made by this court. By order dated 3.6.2002 passed in notice of motion no.2621 of 2000 this Court granted interim order in terms of prayer clause (a) of the notice of motion no.2621 of 2000. The prayer clause (a) reads as under:-

> "(a) That pending the hearing and final disposal of this suit, the Defendant, his servants and agents be temporarily restrained by an order and injunction of this Hon'ble Court from any manner acting, enforcing and/or taking any actions in furtherance of Two Deed of Conveyance dated 22.10.97 and 13.12.97, General Power of Attorney, Two Affidavit and Possession Letter dated 22.10.97, signed by the plaintiff in favour of the Defendant in respect of property one Garage with shed situated at on land C.T.S.No.223,

> Chakala, Kulsumbai compound, Opp.Cigrate Factory, Off.Sahar Road, Andheri (East), Mumbai-400099, and/or taking any advantage of the said documents of whatsoever nature;”

Perusal of that prayer clause shows that by that interim order the respondents were restrained from acting or enforcing or taking any action in furtherance of deed of conveyance and power of attorney. According to the petitioner, by making a complaint to the police and by filing a case under Section 138 of the Negotiable Instruments Act the respondents have disobeyed the order. Now the complaint made to the police is about sub-registrar registering the document which was executed by the petitioner in favour of a third party. If the respondents complained that the Registrar was not justified in registering the document, then it cannot be by any stretch of imagination said that they acted contrary to the order passed by this Court. Similarly, when the complaint is filed under Section 138 of the Negotiable Instruments Act, it cannot be in relation to either conveyance or general power of

attorney. In nutshell, the effect of the order is that till the suit is pending the respondents will not claim any rights on the basis of conveyance and the respondent will not act as a power of attorney holder of the plaintiff. It is not the allegation of the petitioner that the respondents have made any claim on the basis of the conveyance or acted on the conveyance or that they have acted as power of attorney holder of the plaintiff. Then it was submitted that the respondents have created forged documents whereby it is shown that the plaintiff has settled the matter with them. It is the allegation of the plaintiff that it is a forged document. That allegation cannot be gone into in the contempt petition. The conduct of the respondents, even assuming it to be a false, alleging that the plaintiff has settling the matter with them, will not amount to disobedience of the order passed by the Court.

2. Therefore, looking to the matter from any point of view it cannot be said that the respondents have willfully disobeyed the order made by the Court.

The contempt petition is disposed of. Show cause notice is discharged.